

**IN THE U.S. DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

ARTHUR GINSBERG )

v. )

JAMES L. DeHART, )

JOHN P. GRIFFITH, )

LANDYA B. McCAFFERTY, )

MARGARET H. NELSON, )

DIANE M. NICOLSI, )

MAX DOES 1 through 12, )

MAXINE DOES 1 through 12, )

NED ZOES 1 through 12, )

NADINE ZOES 1 through 12, )

Case No. **1:10-cv-00452**

**CORRECTED MOTION TO STAY PROCEEDINGS PENDING COURT  
ACTION ON PLAINTIFF'S MOTION TO ADD A PARTY  
WITH  
INTEGRATED MEMORANDUM OF LAW**

NOW COMES Plaintiff, appearing in his pro-se capacity, and respectfully requests that the proceedings herein be stayed pending this Honorable Court's action on Plaintiff's motion to add a party. In support thereof, the Plaintiff states:

1. The Plaintiff has filed herein a Motion To Add A Party Defendant Pursuant To Rule 21 of The Federal Rules of Civil Procedure.
2. With that motion, the Plaintiff advised the Court and all parties of record that he had neglected to include a party defendant competent to answer his complaint's allegations concerning the constitutionality of New Hampshire Supreme Court Rules 37(5)(c), 37A(II)(a)(6), and Rule 37A(IV)(a)(2).
3. The Plaintiff requested that the Court allow addition of the Honorable John Broderick as an indispensable party under Fed. R. Civ. P. Rule 19(a). *Blacks v. Mosley Machinery Co.*, 57 FRD 503 (ED Pa 1972).

4. Under Fed. R. Civ. P. Rule 21, a motion to add a party may be made “at any stage of the action”, but it is preferable to move to add a party as early as possible in order to avoid prejudice or delay. International Brotherhood of Teamsters v. AFL & CIO, 32 FRD 441 (ED MICH 1963).
5. Insofar as Rule 21 relates to the addition of parties, it is intended to permit the addition of a person who, through inadvertence, mistake, or for some other reason, was not made a party and whose inclusion as a party is determined to be necessary or desirable. Fair Housing Development Fund v. Burke, 55 FRD 414 (ED NY 1972).
6. A motion under Fed. R. Civ. P. Rule 21 to add parties is addressed to the sole discretion of the court. Soler v. G & U Inc., 30 FR Serv2d. 913 (SD NY 1980).
7. The general standard by which the court is guided in ruling on a motion to add parties is the same standard of liberality afforded to motions to amend pleadings under Fed. R. Civ. P. Rule 15. Fair Housing Development Fund v. Burke, 55 FRD 414 (ED NY 1972); Rollins Burdick Hunter Inc. v. Lemberger, 105 FRD 631 (ED WIS 1985).
8. There is a high probability that the Court will grant Plaintiff’s motion to add the Honorable John Broderick as a party defendant.
9. When a motion to add a defendant is granted, the Plaintiff must comply with the provisions of Fed. R. Civ. P. Rules 3 and 4 relating to the issuance and service of a summons. Sarne v. Fiesta Motel, 79 FRD 567 (ED PA 1978).
10. The granting of Plaintiff’s motion to add a party defendant would essentially render the pending motions to dismiss as moot.

11. The Plaintiff has made a good faith effort to obtain concurrence in the relief requested by this motion.
12. Attorney Mary E. Maloney, representing Defendants James L. DeHart, Landya B. McCafferty, Margaret H. Nelson, and Diane M. Nicolosi, has informed the Plaintiff that “the State objects to both the Motion to Stay and the Motion to Add Party.”
13. Attorney John C. Kissinger, representing Defendant John P. Griffith, has informed the Plaintiff that “[o]n behalf of Attorney Griffith, we take no position on your motion to add party, but we object to your motion to stay.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court:

- A. Enter an order staying proceedings herein pending this Court’s action on Plaintiff’s motion to add the Honorable John Broderick as a Defendant.
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

Dated: November 23, 2010

/s/ Arthur Ginsberg  
Arthur Ginsberg  
10 Glendale Dr.  
Nashua, NH 03064  
[aginsberg@comcast.net](mailto:aginsberg@comcast.net)

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**CERTIFICATE OF SERVICE**

I, Arthur Ginsberg hereby certify that on this 23rd day of November 2010, I served copies of the foregoing Motion on all Counsel of Record via ECF.

/s/ Arthur Ginsberg  
Arthur Ginsberg